

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

U.S. DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THE FAMILY ROSARY, INC.,

COMPLAINT

Plaintiff,

-against-

Civil Action No.

03-30277-KPN

BOWDOIN CONSTRUCTION CORP.;
ST. PAUL FIRE & MARINE INSURANCE COMPANY,

Defendants.

Plaintiff, The Family Rosary, Inc. by its attorneys Tobin and Dempf, LLP, as and for a complaint against defendants, respectfully submits the following:

GENERAL ALLEGATIONS

1. This is an action in law for money damages arising from the breach of an agreement to construct a new facility for the plaintiff by defendant which was covered by a surety bond.

2. Plaintiff, The Family Rosary, Inc. ("Family Rosary"), is a not-for-profit corporation duly organized under the New York Not-For-Profit Corporation Law, maintaining a place of business in the County of Albany, State of New York.

3. Defendant, Bowdoin Construction Corp. ("Bowdoin"), is a business corporation organized and existing under the laws of the Commonwealth of Massachusetts maintaining a place of business at Needham Heights, Massachusetts.

4. Defendant, St. Paul Fire & Marine Insurance Company ("St. Paul"), is a business corporation organized and existing under the laws of the State of Minnesota maintaining a place of business at St. Paul, Minnesota.

5. Jurisdiction is proper in this District due to diversity of citizenship under 28 U.S.C. §1332, and venue is proper in this District under 28 U.S.C. §1391(a) in that the construction site and activities associated with the performance of the construction agreement took place in this District. The amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

**COUNT I
BREACH OF CONTRACT**

1. That, on or about October 29, 1999, for valuable consideration Family Rosary and Bowdoin entered into an agreement wherein and by Bowdoin was to perform and provide certain construction services, including labor and materials for the construction of a new building consisting of approximately 22,000 square feet for Family Rosary in Brockton, Massachusetts.

2. That St. Paul issued performance and payment bonds, in its capacity as surety, naming Family Rosary as the obligee in connection with same on the subject project in the face amount of \$3,573.288.00.

3. That Bowdoin acting as the construction manager and constructor initiated its performance under the aforesaid agreement by providing labor, materials, tools, equipment and supervision incident thereto.

4. Family Rosary duly performed all of the terms and conditions of the agreement.

5. Bowdoin has not performed all of the terms and conditions of the construction agreement.

6. Bowdoin has breached its agreement with Family Rosary in the following manner:

- (a) Failing to provide the labor and materials specified by construction agreement and project documents; and
- (b) Failing to properly coordinate, monitor, sequence and complete its performance obligations.

7. The aforesaid breaches were caused solely by defendant Bowdoin acting through its employees, agents, representatives, contractors, subcontractors, materialmen, and suppliers, without any action or omission on behalf of the plaintiff contributing thereto, all thereby compelling plaintiff to sustain damages and arrange for corrective work necessitated by the failed performance of defendant Bowdoin.

WHEREFORE, plaintiff has sustained damages in the sum in excess of seventy-five thousand dollars (\$75,000.00) commensurate with the proof of damages in this case, together with pre-judgment interest and costs of this action.

**COUNT II
NEGLIGENCE**

1. Plaintiff repeats and realleges every allegation set forth at paragraphs 1 through 7, inclusive, of Count I.

2. Plaintiff retained defendant Bowdoin to perform construction services, including labor and materials, in connection with the construction of the new facility building for plaintiff at Brockton, Massachusetts consisting of approximately 22,000 square feet in accordance with project specifications and requirements.

3. Defendant Bowdoin, through its employees, agents, contractors, subcontractors, materialmen and suppliers:

- a. Carelessly, negligently and improperly coordinated and advanced the progress of the construction;
- b. Negligently and carelessly failed to coordinate, monitor and sequence the performance of the activities of the project resulting in performance omissions and errors; and
- c. Careless, negligently and improperly performed its construction agreement by providing defective materials, labor and construction services.

4. The negligence of defendant Bowdoin resulting in damages to the plaintiff was caused solely by the carelessness and negligence on the part of defendant Bowdoin without any fault or negligence or want of care on the part of the plaintiff.

WHEREFORE, plaintiff has sustained damages in the sum in excess of seventy-five thousand dollars (\$75,000.00) commensurate with the proof of damages in this case, together with pre-judgment interest and costs of this action.

**COUNT III
BREACH OF SURETY BOND**

1. Plaintiff repeats and realleges every allegation set forth at paragraphs 1 through 7, inclusive, of Count I.
2. Defendant St. Paul issued a performance bond and payment bond to the benefit of the plaintiff in the capacity of surety for the performance of defendant Bowdoin on the subject construction project.
3. Defendant St. Paul, pursuant to the surety bonds, was notified by plaintiff of defendant Bowdoin's improper, incomplete and failed performance under the construction agreement and the surety bonds.
4. Plaintiff has complied with the terms and conditions of the project surety bonds issued by St. Paul.;
5. Defendant St Paul has failed to protect plaintiff's interests, pursuant to the surety bonds and complete the project pursuant to the project specifications and requirements.
6. Defendant St. Paul has breached its surety obligations under the surety bonds benefiting the plaintiff on the subject project.

WHEREFORE, plaintiff has sustained damages in the sum in excess of seventy-five thousand dollars (\$75,000.00) commensurate with the proof of damages in this case, together with pre-judgment interest and costs of this action.

JURY DEMAND

Plaintiff hereby demands a trial by jury on its complaint in the above-entitled action.

Dated: November 18, 2003

TOBIN AND DEMPFF, LLP

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